

EXHIBIT D



**Service of Process
Transmittal**

03/02/2020

CT Log Number 537301153

TO: PEGGY STEINMAN
X.L. America, Inc.
505 EAGLEVIEW BLVD STE 100
EXTON, PA 19341-1199

RE: Process Served in Texas

FOR: XL Specialty Insurance Company (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: DYER MECHANICAL SERVICES, LLC, Pltf. vs. XL SPECIALTY INSURANCE COMPANY and LANCE GRIGAR, Dfts.

DOCUMENT(S) SERVED: Citation, Petition

COURT/AGENCY: 434th Judicial District Court Fort Bend County, TX
Case # 20DCV271781

NATURE OF ACTION: Insurance Litigation

ON WHOM PROCESS WAS SERVED: C T Corporation System, Dallas, TX

DATE AND HOUR OF SERVICE: By Certified Mail on 03/02/2020 postmarked on 02/28/2020

JURISDICTION SERVED : Texas

APPEARANCE OR ANSWER DUE: At or Before 10:00 a.m. on the Monday next after the expiration of 20 days after you were served this citation (Document(s) may contain additional answer dates)

ATTORNEY(S) / SENDER(S): Richard D. Daly
Daly & Black, P.C.
2211 Norfolk St., Suite 800
Houston, TX 77098
713-665-1405

ACTION ITEMS: CT has retained the current log, Retain Date: 03/02/2020, Expected Purge Date: 03/07/2020

Image SOP

Email Notification, PEGGY STEINMAN peggy.steinman@axaxl.com

Email Notification, KIMBERLY RIGOROSO kimberly.rigoroso@axaxl.com

SIGNED: C T Corporation System
ADDRESS: 1209 N Orange St
Wilmington, DE 19801-1120

For Questions: 866-401-8252
EastTeam2@wolterskluwer.com

RECEIVED
EXTON LEGAL

MAR - 3 2020

Peggy Rubin

Page 1 of 1 / SA

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.



BEVERLEY MCGREW WALKER

District Clerk

Fort Bend County, Texas
301 Jackson St., Room 101
Richmond, Texas 77469

Physical: 1422 Eugene Heimann Circle
Richmond, Texas 77469

OFFICIAL BUSINESS

Penalty for Private Use



9434 7266 9904 2152 4779 02

RETURN RECEIPT REQUESTED

XL SPECIALTY INSURANCE COMPANY
C/O CT CORPORATION SYSTEM
1999 BRYAN STREET SUITE 900
DALLAS, TX 75201-3140

**SERVICE FEE COLLECTED
BY DISTRICT CLERK**

THE STATE OF TEXAS

CITATION

**TO: XL SPECIALTY INSURANCE COMPANY
C/O CT CORPORATION SYSTEM
1999 BRYAN STREET SUITE 900
DALLAS TX 75201-3140**

NOTICE:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on Monday next following the expiration of twenty days after you were served this citation and PLAINTIFF'S ORIGINAL PETITION filed on FEBRUARY 27, 2020, a default judgment may be taken against you.

The case is presently pending before the 434TH JUDICIAL DISTRICT COURT of Fort Bend County sitting in Richmond, Texas. It bears cause number 20-DCV-271781 and is styled:

DYER MECHANICAL SERVICES, LLC VS XL SPECIALTY INSURANCE COMPANY, AND LANCE GRIGAR

The name and address of the attorney for PLAINTIFF is:

**RICHARD D DALY
DALY & BLACK PC
2211 NORFOLK ST. SUITE 800
HOUSTON TX 77098
713-655-1405**

The nature of the demands of said PLAINTIFF is shown by a true and correct copy of the PLAINTIFF'S ORIGINAL PETITION accompanying this citation and made a part hereof.

If this Citation is not served, it shall be returned unserved. Issued under my hand and seal of said Court, at Richmond, Texas, on this the 28th day of February, 2020.

**DISTRICT CLERK BEVERLEY MCGREW WALKER
FORT BEND COUNTY, TEXAS**

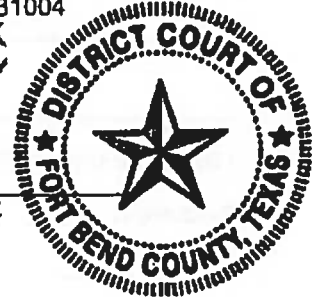
Physical Address:

1422 Eugene Helmann Circle, Room 31004
Richmond, Texas 77469

Mailing Address:

301 Jackson Street, Room 101
Richmond, Texas 77469

By: *Erica Rodriguez*
Deputy District Clerk ERICA RODRIGUEZ
Telephone: (281) 633-7612



SERVICE

20-DCV-271781

434th Judicial District Court

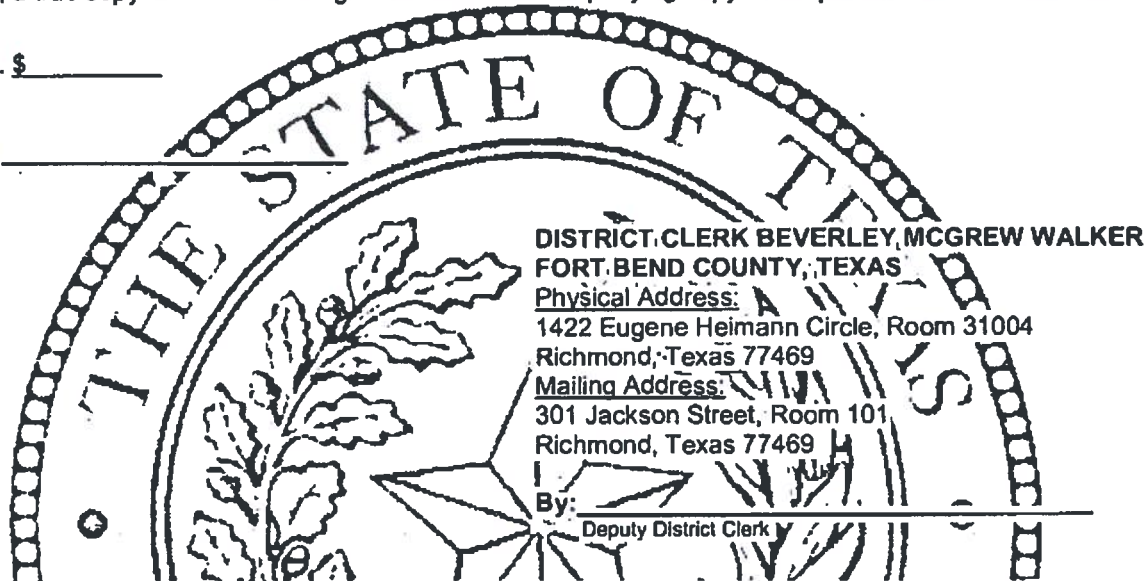
Dyer Mechanical Services, LLC vs XL Specialty Insurance Company and Lance Grigar

CERTIFICATE OF DELIVERY BY CERTIFIED MAIL

Came to hand on the _____ at _____ o'clock and executed _____
 _____, on the _____, by delivering to the within named _____
 _____ by registered or certified mail, with delivery - restricted to addressee only, return receipt
 requested, a true copy of this citation together with the accompanying copy of the petition were attached thereto.

Fee..... \$ _____

CMRRR# _____

**COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.**

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The signature is not required to be verified. If the return is signed by a person other than a sheriff, constable, or the clerk of the court, the return shall be signed under penalty of perjury and contain the following statement:

"My name is _____, my date of birth is _____
 (First, Middle, Last)
 _____, and my address is _____
 _____ (Street, City, Zip)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in _____ County, State of _____
 on the day of _____

Declarant / Authorized Process Server_____
(Id # & expiration of certification)**SERVICE**

Citation (By Certified Mail) issued to XL Specialty Insurance Company on 2/28/2020

CAUSE NO. 20-DCV-271781

DYER MECHANICAL SERVICES, LLC,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
vs.	§	FORT BEND COUNTY, TEXAS
	§	
XL SPECIALTY INSURANCE COMPANY	§	
AND LANCE GRIGAR	§	
	§	Fort Bend County - 434th Judicial District Court
Defendant.	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Dyer Mechanical Services, LLC ("DMS"), Plaintiffs herein, file this Original Petition against Defendants XL Specialty Insurance Company ("XL Specialty") and Lance Grigar ("Grigar"). In support of its causes of action, Plaintiff would respectfully show the Court the following:

I.
THE PARTIES

1. Plaintiff is an LLC based in Texas.
2. XL Speciality is an insurance company doing business in the State of Texas which may be served through its registered agent for service of process in the State of Texas, CT Corporation System, via certified mail at 1999-Bryan Street, Suite 900, Dallas, TX 75201-3140.
3. Lance Grigar is a Texas resident who may be served at his place of work in the State of Texas at 14100 Southwest Freeway, Ste. 420, Sugar Land, TX 77478.

II.
DISCOVERY

4. This case is intended to be governed by Discovery Level 2.

III.
CLAIM FOR RELIEF

5. The damages sought are within the jurisdictional limits of this court. Plaintiffs currently seek monetary relief over \$1,000,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney's fees.

IV.
JURISDICTION AND VENUE

6. This court has subject matter jurisdiction of this cause of action because it involves an amount in controversy in excess of the minimum jurisdictional limits of this Court. No diversity of citizenship exists in this matter.

7. Venue is proper in Fort Bend County because all or a substantial part of the events or omissions giving rise to the claim occurred in Bexar County. TEX. CIV. PRAC & REM CODE § 15.002(a)(1). In particular, Mr. Grigar's actions occurred in Fort Bend County.

V.
FACTUAL BACKGROUND

8. On May 26, 2017 DMS entered into a contract with HITT Contracting, Inc., to perform certain construction work at the Kingsville Naval Air Station. HITT Contracting purchased builder's risk policy Policy No. UM00055252MA18A, issued by XL Specialty, for the job. DMS was an additional insured under a builder's risk policy.

9. Sometime within the policy period (March 1, 2018 through March 1, 2019), while performing roofing work, a rainstorm occurred, damaging the interior of the Naval Air Station as well as certain personal property. The circumstances under which the damage occurred was such that it was covered under the builder's risk policy at issue. DMS subsequently filed a claim on the insurance policy. XL Specialty assigned Lance Grigar to adjust the claim.

10. Defendants failed to even bother to adjust the claim.

11. This unreasonable investigation (or lack of such) led to the failure of XL Specialty or Grigar to make any payment on the claim.

VI.
CAUSES OF ACTION

12. Each of the foregoing paragraphs is incorporated by reference in the following:

A. Breach of Contract

13. XL Specialty had a contract of insurance with Plaintiff. XL Specialty breached the terms of that contracts by wrongfully failing to adjust the claim and therefore, not paying the claim and Plaintiff was damaged thereby.

B. Prompt Payment of Claims Statute

14. The failure of XL Specialty to pay for the losses and/or to follow the statutory time guidelines for accepting or denying coverage constitutes a violation of Section 542.051 *et seq.* of the Texas Insurance Code.

15. Plaintiff, therefore, in addition to Plaintiffs' claims for damages, is entitled to 18% interest and attorneys' fees as set forth in Section 542.060 of the Texas Insurance Code.

C. Bad Faith/Deceptive Trade Practices Act ("DTPA")

16. Defendants are required to comply with Chapter 541 of the Texas Insurance Code.

17. Defendants violated Section 541.060 by:

- (1) misrepresenting to Plaintiffs a material fact or policy provision relating to coverage at issue;
- (2) failing to attempt in good faith to effectuate prompt, fair, and equitable settlements of their claims with respect to which the insurer's liability had become reasonably clear;

- (3) failing within a reasonable time to affirm or deny coverage of the claim to Plaintiff or submit a reservation of rights to Plaintiff; and
- (4) refusing to pay the claim without conducting a reasonable investigation with respect to the claims;

18. Defendants knowingly committed the acts complained of. As such, Plaintiff is entitled to exemplary and/or treble damages pursuant to the DTPA and Texas Insurance Code Section 541.152(a)-(b).

D. Attorneys' Fees

19. Plaintiff engaged the undersigned attorney to prosecute this lawsuit against Defendants and agreed to pay reasonable attorneys' fees and expenses through trial and any appeal.

20. Plaintiff is entitled to reasonable and necessary attorney's fees pursuant to Texas Civil Practice and Remedies Code Sections 38.001-38.003 because it is represented by an attorney, presented its claims to Defendants, and Defendants did not tender the just amount owed before the expiration of the 30th day after the claim was presented.

21. Plaintiff further prays that it be awarded all reasonable attorneys' fees incurred in prosecuting its causes of action through trial and any appeal pursuant to Sections 541.152 and 542.060 of the Texas Insurance Code.

VII.
CONDITIONS PRECEDENT

22. All conditions precedent to Plaintiff's right to recover have been fully performed, or have been waived by Defendants.

**VIII.
PRAYER**

WHEREFORE, PREMISES CONSIDERED, DMS prays that, upon final hearing of its case, it recover all damages from and against Defendants that may reasonably be established by a preponderance of the evidence, and that Plaintiff be awarded attorneys' fees through trial and appeal, costs of court, pre-judgment interest, post-judgment interest, and such other and further relief, general or special, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

DALY & BLACK, P.C.

By: /s/ Richard D. Daly
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ecfs@dalyblack.com
2211 Norfolk St., Suite 800
Houston, Texas 77098
713.655.1405—Telephone
713.655.1587—Fax

ATTORNEYS FOR PLAINTIFF

